

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

_____	:	
EDWIN L. PATILLO,	:	Hon. Noel L. Hillman
	:	
Petitioner,	:	Civil No. 08-5109 (NLH)
	:	
v.	:	<u>O P I N I O N</u>
	:	
TROY LEVI,	:	
	:	
Respondents.	:	
_____	:	

APPEARANCES:

EDWIN L. PATILLO, #41226-050
USP Canaan
P.O. Box 300
Waymart, Pennsylvania 18472
Petitioner Pro Se

HILLMAN, District Judge

Edwin L. Patillo filed this action as a Petition and an Amended Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 in the United States District Court for the Eastern District of Pennsylvania seeking release from the Federal Detention Facility in Philadelphia, where he was incarcerated at the time. See Patillo v. Levi, Civil No. 08-0656 (JCJ) (E.D.Pa. filed Feb. 11, 2008). United States District Judge J. Curtis Joyner transferred the case to this Court, and the Clerk received the papers on October 17, 2008. For the reasons set forth below, and because Petitioner's direct appeal from the judgment of conviction is pending before the United States Court of Appeals,

this Court will dismiss the matter without prejudice to the filing of a motion pursuant to 28 U.S.C. § 2255 after the conviction becomes final.

I. BACKGROUND

The Petition and Amended Petition challenge Petitioner's judgment of conviction, which was filed in this Court on May 14, 2008, in United States v. Patillo, Crim. No. 06-0611 (RBK) (D.N.J. filed Aug. 9, 2006). Patillo raises essentially two grounds: (1) evidence discovered after entry of the jury verdict on May 11, 2007 (but before entry of the judgment of conviction) shows that police officers fabricated evidence admitted at the trial; and (2) the United States lacked jurisdiction to prosecute Patillo. The record in the criminal case shows, however, that Patillo presented the same arguments to Judge Kugler in a motion for a new trial, filed November 30, 2007, and that Judge Kugler denied the motion on August 14, 2008, prior to imposing the sentence. The record further shows that Patillo's direct appeal is pending before the United States Court of Appeals for the Third Circuit, and that briefs have not yet been filed. See United States v. Patillo, C.A. No. 08-3473 (3d Cir. docketed Aug. 18, 2008).

II. STANDARD OF REVIEW

"Habeas corpus petitions must meet heightened pleading requirements." McFarland v. Scott, 512 U.S. 849, 856 (1994).

Habeas Rule 2(b) requires a § 2255 motion to "specify all the grounds for relief available to the moving party," "state the facts supporting each ground," and "state the relief requested." 28 U.S.C. § 2255 Rule 2(b).

Habeas Rule 4 requires a judge to sua sponte dismiss the motion without ordering a responsive pleading "[i]f it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief." 28 U.S.C. § 2255 Rule 4(b). Thus, "Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face." McFarland, 512 U.S. at 856. Dismissal without the filing of an answer has been found warranted when "it appears on the face of the petition that petitioner is not entitled to relief." Siers v. Ryan, 773 F.2d 37, 45 (3d Cir. 1985), cert. denied, 490 U.S. 1025 (1989); see also McFarland, 512 U.S. at 856; United States v. Thomas, 221 F.3d 430, 437 (3d Cir. 2000) (habeas petition may be dismissed where "none of the grounds alleged in the petition would entitle [the petitioner] to relief").

III. DISCUSSION

"As a general rule, the timely filing of a notice of appeal is an event of jurisdictional significance, immediately conferring jurisdiction on a Court of Appeals and divesting a district court of its control over those aspects of the case

involved in the appeal.” Venen v. Sweet, 758 F. 2d 117, 120 (3d Cir. 1985 (citations omitted)). As the Venen court explained, this rule “has the salutary purpose of preventing the confusion and inefficiency which would of necessity result were two courts to be considering the same issue or issues simultaneously.” Id. at 121. In the context of a collateral attack upon a federal conviction, courts have concluded that “there is no *jurisdictional* bar to a district court’s adjudication of a § 2255 motion while the movant’s direct appeal is pending, but that such actions are disfavored as a matter of judicial economy and concern that the results on direct appeal may make the district court’s efforts a nullity.” United States v. Banks, 269 Fed. App’x 152, 153 (3d Cir. 2008); see also United States v. Prows, 448 F. 3d 1223, 1228-29 (10th Cir. 2006); Womack v. United States, 395 F. 2d 630, 631 (D.C. Cir. 1968).

In the case at bar, Patillo’s pro se pleadings, like his counseled direct appeal, challenge his conviction and sentence. Accordingly, adjudication of the direct appeal may render moot the issues raised in these pro se filings. Under these circumstances, this Court declines to entertain Patillo’s challenge to his conviction and sentence, and will dismiss this matter, without prejudice to the filing of a § 2255 motion after the conviction becomes final. See Banks, 269 Fed. App’x at 153; United States v. Ford, 215 Fed. App’x 167 (3d Cir. 2007). In

addition, this Court denies a certificate of appealability because jurists of reason would not find it debatable that dismissal of the Petition/motion is correct.

IV. CONCLUSION

For the reasons set forth above, the Court dismisses the Petition without prejudice to the filing of a § 2255 motion after the conviction becomes final and denies a certificate of appealability.

s/Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.

Dated: April 23, 2009

At Camden, New Jersey